

September 10, 2026

Mr. Lyle W. Cayce, Clerk of the Court
U.S. Court of Appeals for the Fifth Circuit
Office of the Clerk
600 S. Maestri Place, Suite 115
New Orleans, LA 70130

Re: *McComb Children's Clinic v. Kennedy*, Case No. 26-60101

Dear Mr. Cayce,

This letter responds to a notice of supplemental authority that Appellees filed on September 9, 2026, under Federal Rule of Appellate Procedure 28(j), concerning an unpublished order in *Florida v. Department of Health and Human Services*, No. 25-12095, 2026 WL 2618386 (11th Cir. Sept. 4, 2026) (per curiam). ECF 65-1, ECF 65-2.

Appellees allege that the plaintiffs in *Florida* “challenged the same HHS Rule at issue in this case.” ECF 65-1 at 1. But that is not how the Eleventh Circuit describes the *Florida* case. It asserts that although those plaintiffs challenged the rule’s “gender identity” language, their “complaint did not challenge the 2024 Rule’s definition of sex discrimination to include sex stereotypes.” ECF 65-2 at 8.

Not so here. McComb Children’s Clinic (MCC) challenged both the rule’s “gender identity” code sections and its “sex stereotypes” clause, which the rule says includes a distinct gender identity nondiscrimination mandate. This is explained in MCC’s opening brief (ECF 28 at 22, citing ROA.025–26 & ROA.057) and its reply (ECF 41 at 3–6).

Consequently, when the Eleventh Circuit dismissed the *Florida* appeal as moot, it was dismissing a challenge covering specific “gender identity” code sections that had already been vacated. Here, the “sex stereotypes” clause that MCC also challenged has not been vacated. The district court acknowledged as much, but incorrectly held that MCC could not seek vacatur of that clause because the court had given declaratory relief to separate parties in a separate case. ROA.817.

That ruling was erroneous, and nothing in *Florida* supports it. Declaratory relief given to a separate party in a separate case on a distinct question is not the “precise” relief MCC still seeks: vacatur of the existing “sex stereotypes” requirement in the final rule. See *Franciscan All., Inc. v. Becerra*, 47 F.4th 368, 374

(5th Cir. 2022). So the former cannot render vacatur “impossible” to moot MCC’s case. *United States v. Heredia-Holguin*, 823 F.3d 337, 340 (5th Cir. 2016). *Florida* had no occasion to consider this question, since it concluded there was no claim against the “sex stereotypes” clause in that case.

Respectfully submitted,

/s/ Matthew S. Bowman

Matthew S. Bowman
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McComb Children’s Clinic, LTD.



CERTIFICATE OF COMPLIANCE

I certify that the body of this letter contains 347 words and complies with Federal Rule of Appellate Procedure 28(j).

/s/ Matthew S. Bowman

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